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No. 76-1416

In the Supreme Court of the United States

OCTOBER TERM, 1977

JOSEPH A. CALIFANO, JR., SECRETARY OF HEALTH, EDUCATION, AND WELFARE, PETITIONER

v.

VENUS MANDLEY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE PETITIONER

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August 23, 1977

Honorable Michael Rodak, Jr.
Clerk
Supreme Court of the United States
Washington, D. C. 20543

Re: Joseph A. Califano, Jr., Secretary of Health, Education, and Welfare v. Venus Mandley, et al., No. 76-1416

Dear Mr. Rodak:

1. The Court should be apprised of an error in footnote 16, page 27, of the brief on behalf of the Secretary in this case. In that footnote, we indicate that under Section 1118 of the Social Security Act, 42 U.S.C. 1318, a state that participates in the medicaid program under Title XIX of the Act may substitute the medicaid reimbursement formula prescribed by Section 1905(b) of the Act to determine the total reimbursement to which it is entitled under Sections 3(a), 403(a), 1003(a), 1403(a), and 1603(a) of the Act. In fact, under Section 1118 the medicaid reimbursement formula may be used only to determine the reimbursement to which the state is entitled under paragraphs (1) and (2) of Sections 3(a), 403(a), 1003(a), 1403(a), and 1603(a).

Reimbursement of payments under the program of aid to families with dependent children ("AFDC") is made under paragraph (1) of Section 403(a). But reimbursement of payments under the program of emergency assistance ("EA") is made under paragraph (5) of Section 403(a). A state therefore may not elect under Section 1118 to substitute the medicaid reimbursement formula to determine reimbursement of EA payments. Accordingly, different reimbursement formulae will govern the AFDC and EA programs, even for those states that exercise their election under Section 1118. The contrary assertion in the last sentence of footnote 16 is incorrect.

2. Counsel for respondents has called to our attention a minor error in citation on page 18 of the brief. The citation on the last two lines of that page should read: "Senate Hearings, supra, at 270. Cf. House Hearings, supra, at 847-848."

Sincerely,

Wade H. McCree, Jr.

WADE H. McCREE, JR.
Solicitor General

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No. 76-1416

JOSEPH A. CALIFANO, JR., SECRETARY OF HEALTH, EDUCATION, AND WELFARE, PETITIONER

v.

VENUS MANDLEY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the court of appeals of November 23, 1976 (Pet. App. 1A-23A), is reported at 545 F. 2d 1062. The order of the district court of July 12, 1976, dismissing the case as moot (Pet. App. 24A), is not reported. The opinion of the court of appeals of September 25, 1975 (Pet. App. 25A-40A), is reported at 523 F. 2d 415. The district court's decision and orders of March 14, 1975 (Pet. App. 41A-44A), and November 21, 1974 (Pet. App. 45A-53A), are not reported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 84A-85A) was entered on November 23, 1976. A timely petition for rehearing was denied on December 14, 1976 (Pet. App. 54A). On March 4, 1977, Mr. Justice Stevens extended the time for filing a petition for a writ of certiorari to and including April 13, 1977. The petition for a writ of certiorari was filed on April 13, 1977, and was granted on June 6, 1977 (Appendix, *infra*, pp. 43-44).[1] The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Secretary of Health, Education and Welfare has authority under Section 403(a)(1) of the Social Security Act to reimburse amounts expended by the states in providing emergency "aid to families with dependent children" under Section 406(b) of the Act.

2. Whether those states that elect to provide "emergency assistance to needy families with children," under Section 406(e)(1) of the Act, must furnish such assistance to all needy families to the extent necessary to avoid destitution.

3. Whether the court of appeals improperly ordered nationwide relief on behalf of a statewide class.

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[1] On June 6, 1977, this Court also granted the petition for a writ of certiorari filed by the State of Illinois in *Quern* v. *Mandley*, No. 76-1159, and ordered that case consolidated with the instant case. A joint appendix has been filed in these cases.

STATUTES AND REGULATIONS INVOLVED

Sections 401, 402(a)(1) and (10), 403(a)(1) and (5), and 406(a), (b), and (e) of the Social Security Act, 49 Stat. 627-629, as amended, 42 U.S.C. (and Supp. V) 601, 602(a)(1) and (10), 603(a)(1) and (5), and 606(a), (b), and (e), and the relevant regulations of the Department of Health, Education, and Welfare are set forth in pertinent part at Pet. App. 55A-63A.

STATEMENT

Section 403(a)(5) of the Social Security Act, 42 U.S.C. (Supp. V) 603(a)(5), authorizes the Secretary of Health, Education, and Welfare to reimburse 50 percent of the amounts expended by a state in conducting a program of "emergency assistance to needy families with children" ("EA"), within the meaning of Section 406(e)(1) of the Act, 42 U.S.C. 606(e)(1). The State of Illinois adopted an EA program in 1973 (Pet. App. 29A).[2] That program restricted eligibility to persons who also were eligible for (and to applicants who presumptively were eligible for) "aid to families with dependent children" ("AFDC"), within the meaning of Section 406(b) of the Social Security Act, 42 U.S.C. 606(b) (Pet. App. 29A); it limited coverage to the emergency need for shelter resulting from "damage to the building" or from "eviction * * * for reasons other than * * * fail-

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[2] The State had submitted a program to the Secretary for approval in 1971; that program was revised, at the suggestion of the Secretary, to clarify its coverage, and it was adopted as revised in 1973 (Pet. App. 28A-29A).

ure to pay rent" and the emergency need for clothing or household furnishings (*ibid.*).

Respondents are "Illinois recipients of [AFDC benefits] and the Illinois and Chicago Welfare Rights Organizations" (Pet. App. 25A). Shortly after the adoption of the State's EA program, respondents brought this class action against the Illinois Department of Public Aid and its director in the United States District Court for the Northern District of Illinois. The state defendants joined the Secretary as a party defendant.

Respondents' principal contention was that the eligibility restrictions and coverage limitations of the State's EA program violated the Social Security Act.[3] They asserted that an EA program *must* furnish benefits to all persons to whom benefits *may* be paid under Section 406(e)(1), *i.e.*, to all "needy families with children" as therein defined, and therefore that the State's restriction of eligibility to persons also eligible for AFDC benefits was invalid. Similarly, respondents argued that benefits under an EA program *must* be paid in all situations in which such benefits *may* be paid under Section 406(e)(1), *i.e.*, whenever the child is without available resources and the payment of benefits is necessary to avoid destitution of the child (or to provide living arrangements for the child), and therefore that the State's limitation of coverage to particular kinds of emergencies

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[3] Respondents also raised arguments under the Illinois Public Aid Code and the Fourteenth Amendment (Pet. App. 25A-26A).

was invalid. Respondents requested declaratory and injunctive relief, including an order requiring expedited processing of claims for EA benefits (Pet. App. 26A).

The district court sustained the validity of the eligibility restrictions and coverage limitations of the State's EA program (Pet. App. 50A-51A).[4] The court of appeals reversed (Pet. App. 25A-40A), reasoning that Section 402(a)(10) of the Act, 42 U.S.C. (Supp. V) 602(a)(10), which requires that AFDC benefits "shall * * * be furnished * * * to all eligible individuals," should be read as imposing a like requirement with respect to EA benefits as well, and that the definition of "emergency assistance to needy families with children" set forth in Section 406(e)(1) thereby establishes mandatory federal standards of eligibility and coverage that may not be narrowed by the states. According to the court of appeals, the State was required either to discontinue its EA program altogether or to provide EA benefits to all "needy families with children" in all emergency situations posing the risk of destitution (Pet. App. 38A-39A). The case was remanded to the district court for entry of appropriate relief.

Shortly after the court of appeals' decision, the State informed the Secretary that it had elected to terminate its EA program (App. 59-64). The Secretary and the state defendants thereafter moved in the district court to have respondents' complaint dis-

[4] The district court agreed with respondents, however, that the State was not processing EA claims rapidly enough (Pet. App. 52A-53A). The State did not appeal from this ruling.

missed on the ground that the State's termination of its EA program had rendered the case moot (Pet. App. 7A). The court granted the motions and dismissed the complaint (Pet. App. 24A).

The court of appeals again reversed (Pet. App. 1A-23A). After the State had terminated its EA program, it had added to its AFDC program a provision for emergency aid that prescribed eligibility restrictions and coverage limitations essentially identical to those of the terminated EA program (Pet. App. 9A); like other state AFDC expenditures, the cost of providing such assistance was reimbursed by the Secretary pursuant to his authority under Section 403(a)(1) of the Act, 42 U.S.C. 603(a)(1). The court of appeals held, however, "that Section 403(a)(5) [governing reimbursement for EA programs] is the exclusive provision for federal funding of emergency needs" (Pet. App. 13A) and that reimbursement was not available under Section 403(a)(1) (governing reimbursement for AFDC programs). Accordingly, the court concluded that, as a matter of law, the emergency assistance portion of the State's AFDC program was a continuation of the invalidated EA program and therefore that respondents' attacks on the validity of the latter program were not moot (Pet. App. 10A, 18A).

The court of appeals remanded to the district court with instructions to enter judgment in accordance with respondents' proposed final judgment, with certain modifications noted in its opinion (Pet. App. 20A-23A). Judgment was duly entered by the district court, enjoining the Secretary "from approving state

plans for emergency assistance which limit eligibility more narrowly than § 406(e) of the Act or funding an emergency assistance program (however designated) under any provision of the Act other than §§ 406(e) and 403(a)(5)" (Pet. App. 71A). The court's order further requires the Secretary to promulgate regulations conforming with the court of appeals' opinions (Pet. App. 71A-72A).[5]

SUMMARY OF ARGUMENT

I. This case requires consideration of two distinct programs operated under Title IV-A of the Social Security Act—the program of "aid to families with dependent children" ("AFDC"), and that of "emergency assistance to needy families with children" ("EA").

A. 1. Nothing in the Act limits AFDC to fixed monthly payments; special additional payments may be made as the needs and circumstances of individual families may require. Regulations have authorized AFDC payments for special needs at least since 1949. The Secretary regularly has approved AFDC programs providing for special emergency benefits and has reimbursed state payments of such benefits under Section 403(a)(1) of the Act, which governs reimbursement of AFDC expenditures. The Secretary's well-established interpretation and consistent practice are entitled to great weight.

2. It cannot be inferred from the 1968 amendment to Title IV-A, which added the EA program and au-

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[5] The Secretary has submitted proposed regulations to the district court.

thorized the Secretary to reimburse EA expenditures under Section 403(a)(5), either that the Secretary previously had lacked authority to reimburse AFDC emergency benefits or that Congress intended to repeal that authority.

a. The 1968 amendment does not indicate a previous lack of authority to reimburse AFDC emergency benefits. The effect of the 1968 amendment was not to enable the states to pay an entirely new kind of benefit, but rather to enable them to extend emergency payments to a new class of beneficiaries. AFDC benefits were payable only with respect to "dependent" children, *i.e.*, children who had been "deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent." Section 406(a) of the Act. Congress was concerned about families ineligible to receive AFDC benefits but who nevertheless become destitute due to emergency circumstances. It met that concern by making EA benefits payable without regard to whether the child has been deprived of parental support, *i.e.*, by making EA benefits payable to persons not eligible for AFDC benefits as well as to AFDC beneficiaries. See Section 406(e)(1) of the Act. Thus EA benefits may be paid to a family facing destitution as a result of a natural disaster even if both parents live with the child and the father is employed, whereas AFDC emergency benefits are not payable to such a family.

b. Nor did the 1968 amendment effect a repeal of the Secretary's authority to reimburse AFDC emergency benefits under Section 403(a)(1). Nothing in

the statutory text or legislative history suggests that Congress intended to reduce the Secretary's authority under that provision. There is no evidence that Congress intended to bar reimbursement of AFDC emergency benefits, whether as a means of coercing the states into adopting more comprehensive EA programs or for any other reason. Moreover, if Congress had intended to force the states to adopt EA programs, it could have done so directly; instead, the program was explicitly left optional, and only 27 states have adopted it.

B. Since the State's AFDC emergency benefits lawfully were reimbursed by the Secretary under Section 403(a)(1) rather than under Section 403(a)(5), the court of appeals erred in treating the State's payment of such benefits as the operation of a *de facto* EA program.

There are, moreover, significant differences between the AFDC and EA programs that refute any suggestion that AFDC emergency benefits are merely EA benefits in disguise. AFDC benefits may be paid without limitation as to time; EA benefits may be paid only "for a period not in excess of 30 days in any 12-month period." Section 406(e)(1) of the Act. There are differences between the work, age, income, and other requirements of the two programs that may affect particular families' eligibility for benefits. Compare Section 406(a) and (b) with Section 406(e)(1). The rate of federal reimbursement also may differ significantly as between the two programs. Compare Section 403(a)(1) with Section 403(a)(5).

In view of these differences, the State's termination of its EA program and its decision to pay AFDC emergency benefits instead was not a mere formality. Accordingly, respondents' challenge to the State's EA program is moot.

II. The Secretary's regulations recognize that states that adopt EA programs need not provide benefits to all needy families with children or in all circumstances where necessary to avoid destitution. States have relied upon this construction of the Act to restrict eligibility under, or limit coverage of, their EA programs. The Secretary's interpretation appears to have been accepted by Congress and is entitled to great weight.

Nothing in either Section 403(a)(5) or Section 406(e) requires a state to choose between paying EA benefits to all "needy families with children" (Section 406(e)(1)) or to none, or between making such payments in all emergency circumstances where "necessary to avoid destitution of [the] child" (*ibid.*) or in no emergencies at all. Nor does Section 402(a), which specifies the necessary content of the state plans governing AFDC and EA programs, impose such a requirement. Section 402(a)(10), upon which the court of appeals relied, by it terms applies only to AFDC programs.

The legislative history reveals that Congress intended that the states retain flexibility in devising programs of emergency relief. Moreover, Congress projected that the EA program would involve modest expenditures of public funds, less than would appear

necessary for the expansive program envisioned by the court of appeals.

III. Even if the court of appeals was correct in its view of the merits of this case, the court abused its discretion in ordering nationwide relief.

An equitable remedy should be no more burdensome on the defendant than is necessary to provide complete relief to the plaintiffs. Any injuries to respondents could have been fully redressed by statewide relief.

Many states that had no occasion to appear before the court of appeals would be adversely affected by the entry of nationwide relief: pursuant to that relief, the Secretary apparently would be required to treat all emergency benefits, even those paid under AFDC programs, as if they were EA programs, and then to terminate reimbursement for each EA program that the participating state refused to expand to the maximum extent allowable under Section 406(e)(1).

The unnecessary granting of nationwide relief against federal officers places undue burdens on this Court, for holdings that might not warrant this Court's immediate review if relief had been narrowly tailored inevitably assume greater significance when the relief requires revision in the nationwide administration of a federal program.

Finally, the order against the Secretary, which requires him to submit proposed regulations to the district court for approval and to promulgate the regulations as approved, constitutes a "forbidden judicial intrusion into the administrative domain." *Arrow*

Transportation Co. v. *Southern Ry. Co.*, 372 U.S. 658, 670. Where, as here, the governing statute itself does not require the administrator to issue regulations, the courts are without power to order him to do so. And even if the statute did require issuance of regulations, supervision of their promulgation would not be an appropriate task for the judiciary.

ARGUMENT

I

THE SECRETARY HAS AUTHORITY UNDER SECTION 403(a)(1) OF THE SOCIAL SECURITY ACT TO REIMBURSE AMOUNTS EXPENDED BY THE STATES IN PROVIDING EMERGENCY "AID TO FAMILIES WITH DEPENDENT CHILDREN" WITHIN THE MEANING OF SECTION 406(b) OF THE ACT

Title IV-A of the Social Security Act, 42 U.S.C. (and Supp. V) 601 *et seq.*, authorizes federal payments to the states "[f]or the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives * * *." Section 401 of the Act, 42 U.S.C. 601. Federal payments are made to those states that adopt a "plan for aid and services to needy families with children" that satisfies the requirements of Section 402(a) of the Act, 42 U.S.C. (Supp. V) 602(a), and is approved by the Secretary of Health, Education, and Welfare under Section 402(b) of the Act, 42 U.S.C. 602(b).

The principal Title IV-A program is that of "aid to families with dependent children" ("AFDC"), which is defined in Section 406(b) of the Act gen-

erally to mean "money payments with respect to * * * a dependent child or dependent children." In turn, "dependent child" is defined in Section 406(a), 42 U.S.C. 602(a), to mean "a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living [in the home of a relative], and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one [if a student]."[6] The amount of AFDC benefits paid to individual families is determined by the state, subject only to general guidelines set forth in Section 402(a) of the Act. State AFDC program expenditures are reimbursed by the federal government in accordance with the formula prescribed by Section 403 (a)(1).[7]

In 1968, Title IV-A was amended (81 Stat. 893) also to authorize federal reimbursement of state programs of "emergency assistance to needy families with children" ("EA"), which is defined in Section 406(e)(1) to mean assistance to "a needy child under the age of 21 who is * * * living with * * * relatives * * *, but only where such child is without available resources [and] the payments, care, or services involved are necessary to avoid destitution of such child or to provide living arrangements in a home for such

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[6] The term "dependent child" also may include, in certain circumstances, a child who has been "deprived of parental support or care by reason of the unemployment * * * of his father." Section 407(a) of the Act, 42 U.S.C. 607(a).

[7] Reimbursement to Puerto Rico, the Virgin Islands, and Guam is determined by reference to the formula set forth in Section 403(a)(2), 42 U.S.C. 603(a)(2).

child * * *." As is also true with respect to AFDC, the amount of EA benefits paid to individual families is determined by the states. Under Section 403(a)(5), the federal government reimburses 50 percent of state EA program expenditures.

This case arose as a challenge to the eligibility and coverage provisions of the EA program adopted by the State of Illinois in 1973. The State subsequently terminated its EA program, for which it had received federal reimbursement pursuant to Section 403(a)(5); in place of that program, the State began paying emergency benefits under its AFDC program, subject to essentially the same eligibility restrictions and coverage limitations, and receiving federal reimbursement for those payments pursuant to Section 403(a)(1). The court of appeals held that this did not render the challenge to the State's EA program moot.

The court reasoned that AFDC emergency benefits in fact constitute EA benefits, and it concluded that the State's payment of AFDC emergency benefits amounted to the operation of a *de facto* EA program that was subject to the same challenge that respondents had made to the State's former *de jure* EA program. The court acknowledged that this conclusion was "founded on the premise that Section 403(a)(5) is the exclusive provision for federal funding of emergency needs under [Title IV-A]" (Pet. App. 13A), *i.e.*, that state payment of AFDC emergency benefits may not be reimbursed under Section 403(a)(1), which governs AFDC reimbursement, but only under

Section 403(a)(5), which governs EA reimbursement.

The court's premise was incorrect: the states may, as part of their AFDC programs, pay emergency benefits, and those payments are reimbursable by the federal government under Section 403(a)(1), the same authority that governs reimbursement of other AFDC payments. Moreover, the AFDC and EA programs are different in the implications for beneficiaries, for participating states, and for the federal government; accordingly, Illinois' payment of emergency benefits under its AFDC program did not constitute a *de facto* EA program, nor was it a sham or a subterfuge for continuing an EA program under a different name. Since the State's EA program in fact has been terminated, respondents' challenge to that program is moot.

A. AFDC Benefits May Cover Special Emergency Needs

1. Nothing in Title IV-A precludes the states from making additional payments to AFDC beneficiaries to cover special emergency needs. "Aid to families with dependent children" is defined broadly to cover all "money payments"; it therefore is not limited to fixed monthly payments but instead may include special additional payments as the needs and circumstances of individual families may require.

This basic principle has long been recognized by the Secretary and acted upon by the states. The Secretary's regulations permit the states to include

assistance with respect to "special need items" in their AFDC programs. 45 C.F.R. 233.20(a)(2)(v). This permission has been explicit at least since 1949. See Federal Security Agency, *Handbook of Public Assistance Administration*, Part IV, Section 3131 (February 14, 1949).

Although "special need items" has not been specifically defined by the Secretary, it has been well understood that the term includes benefit payments designed to meet emergency needs.[8] The only limitation imposed by the Secretary has been that "the circumstances * * * [giving rise to the 'special need' payments] must be such as to necessitate expenditures not necessary for all individuals." Department of Health, Education, and Welfare, *Handbook of Public Assistance Administration*, Part IV, Section 3131(3) (February 23, 1966). Accordingly, the Secretary has approved state AFDC programs covering, for example, emergency needs arising from catastrophe or natural disaster, emergency child care, and other similar special emergency needs. As of January 1977, the AFDC programs of 45 states covered various special need items (Pet. App. 78A).[9]

In short, the Secretary consistently has construed "aid to families with dependent children" to include

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[8] The term also includes payments for nonemergency needs peculiar to the individual, such as the cost of special therapeutic diets.

[9] As of January 1977, twenty-three of those states had not adopted an EA program (Pet. App. 78A-79A).

payments of emergency benefits to AFDC recipients. In accordance with that construction of the statute, such payments have been reimbursed under Section 403(a)(1), the provision governing reimbursement of AFDC expenditures. This longstanding interpretation of the Social Security Act by the agency charged with its administration is entitled to great weight. See, *e.g.*, *Udall* v. *Tallman*, 380 U.S. 1, 16.

2. The court of appeals, however, inferred from the 1968 amendment to Title IV-A, which authorized the Secretary, under Section 403(a)(5), to reimburse state EA benefit payments that the Secretary lacked any separate authority to reimburse state AFDC emergency benefit payments. Apparently the court believed that the 1968 amendment indicated either that previously there had been no authority to reimburse any kind of emergency benefits or that any such authority had been repealed by implication. But the 1968 amendment supports neither proposition.

a. The 1968 amendment does not show that the Secretary theretofore had lacked authority to reimburse AFDC emergency benefits. The effect of the 1968 amendment was not to enable the states to pay an entirely new kind of benefit, but rather to enable them to pay emergency benefits to a new class of beneficiary.

As we have shown above (pp. 15-17, *supra*), before 1968 the Secretary had authority, under Section 403(a)(1), to reimburse the states for their payment of emergency benefits, but only when those benefits were paid to AFDC beneficiaries. The prob-

lem faced by Congress, in considering new legislative proposals in 1967, was how to enlarge the class of persons to whom the states would be permitted to pay federally reimbursable emergency benefits without at the same time significantly extending the scope of the basic AFDC program.

Congress was concerned about families who did not satisfy the statutory definition of "families with dependent children" but nevertheless confronted the risk of destitution due to short-term emergency circumstances. President Johnson's 1967 proposals for changes in the Social Security Act had included a recommendation for federally assisted emergency benefits to migratory workers, who generally were ineligible for AFDC assistance because of state durational residency requirements. See "President's Proposals for Revision of the Social Security System," Hearings on H.R. 5710 before the House Committee on Ways and Means, 90th Cong., 1st Sess. 64 (1967) (hereinafter cited as "House Hearings"); "Social Security Amendments of 1967," Hearings on H.R. 12080 before the Senate Committee on Finance, 90th Cong., 1st Sess. 270 (1967) (hereinafter cited as "Senate Hearings"). Cf. *Shapiro* v. *Thompson*, 394 U.S. 618. During the course of legislative consideration of the proposals, this recommendation was broadened to include emergency benefits to other needy families with children as well. House Hearings, *supra*, at 847-848; Senate Hearings, *supra*, at 270.[10] Congress agreed

[10] Wilbur J. Cohen, Under Secretary of Health, Education, and Welfare, testified that "[t]here is no mechanism in the

that it was necessary to "provide more flexible and appropriate tools" to "assure needed care for children." S. Rep. No. 744, 90th Cong., 1st Sess. 165 (1967). See also H.R. Rep. No. 544, 90th Cong., 1st Sess. 109, 181 (1967); 113 Cong. Rec. 32853 (1967) (statement of Senator Ribicoff). As the Senate Committee on Finance noted (S. Rep. No. 744, *supra* at 165):

> In the event of eviction, or when utilities are turned off, or when an alcoholic parent leaves children without food, immediate action is necessary.

Senator Mansfield further elaborated (113 Cong. Rec. 36925 (1967)):

> Families with emergency trouble will be able to receive emergency assistance in whatever form it is best for them at their time of need. Families which have been burned out, suffered personal tragedies and such will be able to get money, medical care, shelter provided, food sent in, or whatever else is needed to deal with the crisis.

See also H.R. Rep. No. 544, *supra*, at 96-97, 109; 113 Cong. Rec. 23054 (1967) (statement of Representative Mills).

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existing Federal law to meet the special needs of children which may arise in a crisis situation." Senate Hearings, *supra*, at 270. But it is clear from the context that Mr. Cohen was referring to children in families not receiving AFDC assistance, for he was concerned with persons "excluded from State and local public assistance programs" and indicated that "[w]hat we are * * * asking is for a * * * period of time that would permit the State welfare agency to undertake handling that child in that family in a responsible way." *Ibid.*

The result was an entirely new general program of emergency benefits, the principal purpose of which was to permit special emergency payments to be made to persons not eligible for AFDC assistance. See S. Rep. No. 744, *supra*, at 4, 146; H.R. Rep. No. 544, *supra*, at 4, 113; 113 Cong. Rec. 23054 (statement of Representative Mills), 32592 (statement of Senator Long) (1967).[11] The new amendment added to the Social Security Act both Section 403(a)(5), which authorizes the Secretary to reimburse 50 percent of state expenditures for "emergency assistance to needy families with children," and Section 406(e), which defines that term so as to permit EA benefits to be paid to families who are not eligible for AFDC benefits. See pp. 12-14, *supra*. Thus, whereas AFDC benefits may be paid only with respect to a "dependent child," "who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent" (Section 406(a), (b)), EA benefits may be furnished without regard to whether the child has been deprived of parental support. Compare Sec-

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[11] Senator Curtis observed that "[f]or the first time, the Federal Government will match money for emergency assistance." 113 Cong. Rec. 36319 (1967). However, he then clarified that he was referring to "emergency assistance * * * paid in cases where [the recipients] cannot meet other qualifications [such as eligibility for AFDC]." *Ibid.* Contrary to the apparent understanding of the court of appeals (Pet. App. 15A-16A), therefore, Senator Curtis' remarks are not indicative of a belief that reimbursable emergency assistance had not theretofore been payable to AFDC recipients.

tion 406(a) with Section 406(e)(1). For example, EA benefits may be paid where a natural disaster leaves a family destitute, even if both parents are living in the home and the father is employed; such a family is not eligible for AFDC benefits.

It therefore is clear that the court of appeals below misconstrued the significance of the 1968 amendment. That amendment was necessary not for the purpose of authorizing reimbursements of special payments made to AFDC beneficiaries in emergency circumstances, but rather in order to authorize reimbursement of similar payments made to persons not eligible for AFDC.[12] Accordingly, it cannot be inferred from the 1968 amendment that the Secretary previously had lacked authority under Section 403(a)(1) to reimburse AFDC emergency benefits.

b. Nor can it be inferred that Congress repealed the Secretary's authority under Section 403(a)(1) to make such reimbursement. Certainly nothing in the text of the 1968 amendment purported to terminate the Secretary's authority to make reimbursement for AFDC payments, including payments for special emergency needs, under Section 403(a)(1). The court of appeals apparently believed, however, that its holding that AFDC emergency benefits may not be reimbursed pursuant to that authority was necessary to

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[12] Of course, the classes of potential beneficiaries described in Section 406(a) and (e) overlap, so that emergency benefits may be paid under the EA program to families also eligible for AFDC benefits.

effectuate its earlier decision (Pet. App. 25A-40A) that Section 406(e)(1) requires states adopting EA programs to pay emergency benefits to all "needy families with children" in all circumstances posing a risk of destitution. The court stated that if a state were permitted to pay emergency benefits under its AFDC program to only a portion of those families to whom benefits were payable under Section 406(e)(1), "the requirements of Section 406(e)(1) would be totally eviscerated" (Pet. App. 18A). The court seemingly reasoned that Congress intended to bar the states from paying AFDC emergency benefits as a means of coercing them into adopting comprehensive EA programs.[13]

As we explain below (pp. 28-35, *infra*), the court's premise for this line of reasoning, its reading of Section 406(e)(1), is incorrect: Congress has not required states adopting EA programs to pay benefits to all "needy families with children" or in all circumstances posing a risk of destitution. But even if the contrary were assumed, there nevertheless would be no basis for supposing that Congress sought to induce the states to adopt EA programs by barring them from paying AFDC emergency benefits.

First, nothing in the statute or its legislative history suggests that Congress intended to reduce in any way the scope of state AFDC programs. In par-

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[13] It is clear, however, that Congress did not intend the EA program to be the only federally assisted program that would provide emergency benefits for children. See, *e.g.*, Section 1119 of the Act, 42 U.S.C. 1319 (emergency home repairs).

ticular there is no indication whatsoever that Congress sought to require the states to discontinue AFDC emergency payments. Second, if Congress had wanted to apply coercive pressure against the states, it could have done so directly, for example by requiring participation in the EA program as a condition for reimbursement under the AFDC program. See, *e.g.*, Section 402(a)(27) of the Act, 42 U.S.C. (Supp. V) 602(a)(27) (requiring participation in the child support and establishment of paternity program as a condition of AFDC and EA reimbursement). But Congress did not do so. Instead, it left participation in the EA program entirely optional with the states; indeed, as of January 1977, only 27 states participated in the program (Pet. App. 78A). And there is no evidence that Congress intended to do indirectly what it quite plainly chose not to do directly. In short, Congress never intended to repeal the Secretary's authority under Section 403(a)(1) to reimburse the AFDC emergency benefits paid even by those states that do not participate in the EA program, and it did not effect such a repeal by implication

B. AFDC Emergency Benefits Are Not Merely EA Benefits in Disguise

In holding that respondents' challenge to Illinois' EA program was not moot, the court of appeals reasoned that since the AFDC emergency benefits paid by the State were reimbursable only under Section 403(a)(5), governing the EA program, by definition they constituted EA benefits. But since, as we have

just shown, AFDC emergency benefits properly may be reimbursed under Section 403(a)(1) governing the AFDC program, that definitional equivalence does not hold. We now proceed to show that neither is there a practical equivalence between the two benefit programs: AFDC emergency benefits are not merely EA benefits in disguise.

Payments under an EA program, unlike those under an AFDC program, may be made to needy families with children who have not been deprived of parental support (see pp. 20-21, *supra*). But the two programs are marked by many other significant differences as well.

The most important of these differences pertains to the length of time during which benefits may be paid. In enacting the EA program, Congress was concerned solely with assisting the states in dealing with short-term family emergencies. See, *e.g.*, S. Rep. No. 744, *supra*, at 165-166; H.R. Rep. No. 544, *supra*, at 109. For that reason, emergency benefits may be paid under the EA program to needy families with children, without reference to AFDC eligibility requirements, but only "for a period not in excess of 30 days in any 12-month period." Section 406(e)(1) of the Act.[14] In contrast, there is no durational limitation on the payment of AFDC emergency benefits. For example, when the State in this case terminated its EA program and added a provision for emergency bene-

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[14] The Secretary, however, reimburses "payments which are to meet needs which arose before such 30-day period or are for such needs as rent which extend beyond the 30-day period." 45 C.F.R. 233.120(b)(3).

fits to its AFDC program, it "removed the restriction limiting special assistance payments to once in any 12 consecutive months" (Pet. App. 12A, n. 6). Thus a state's choice between AFDC and EA as the vehicle for furnishing emergency benefits could have a significant impact even upon persons who would be eligible for assistance under either program.

A number of other differences between the two programs could affect particular potential beneficiaries. Although work requirements are imposed with respect to each program, under the AFDC program failure to meet the requirement does not bar payments for the support of the child, whereas under the EA program failure to meet the requirement terminates eligibility for all members of the family. Compare Section 402 (a)(19)(F), 42 U.S.C. (Supp. V) 602(a)(19)(F), with Section 406(e)(1). Whereas AFDC benefits can be paid only while the dependent child is living with relatives (or in a foster home), EA benefits may be paid if the child was living with relatives within six months prior to the month for which assistance is requested. Compare Section 406(a)(1) and 45 C.F.R. 233.110 with Section 406(e)(1) and 45 C.F.R. 233.120 (b)(1)(i). EA benefits may be provided to all otherwise eligible children under the age of 21, whereas AFDC benefits may be furnished to children between the ages of 18 and 21 only if they are students. Compare Section 406(e)(1) with Section 406(a)(2), 42 U.S.C. 606(a)(2). Finally, EA benefits may be furnished to families whose income exceeds AFDC eligibility levels, provided "the payments, care, or services involved are necessary to avoid destitution of

[the] child or to provide living arrangements in a home for such child." Section 406(e)(1).

Moreover, even if the amounts paid to individual families were unaffected, the choice between an EA program and an AFDC program could have significant fiscal implications for the participating state and the federal government. Federal reimbursement of state AFDC payments is determined in accordance with the formula prescribed by Section 403(a)(1) of the Act, which provides for federal reimbursement of not more than 83⅓ percent and, as a practical matter, not less than 50 percent of a state's AFDC expenditures. See also Section 1101(a)(8) of the Act, 42 U.S.C. 1301(a)(8).[15] In contrast, federal reim-

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[15] The court of appeals mistakenly believed that reimbursement of AFDC emergency benefits under Section 403(a)(1) would reduce the amount of federal funds made available for other AFDC payments (see Pet. App. A14-A15). Section 401 of the Act authorizes appropriation of a "sum sufficient to carry out the purposes" of Title IV-A and provides that the monies "made available under this section shall be used for making payments to States" with approved plans. In turn, Section 403(a)(1) requires that the Secretary of the Treasury "shall pay" to the states the amounts calculated according to the formula therein prescribed. There is no authorization ceiling that limits total federal reimbursement in a way that would require a reduction in federal reimbursement of other AFDC benefits in order to accommodate the reimbursement of AFDC emergency benefits.

Moreover, appropriation acts for Title IV-A do not distinguish between AFDC and EA programs. See, *e.g.*, Pub. L. 94-439, 90 Stat. 1418, 1429. Expenses incurred under one program therefore would be as readily reimbursed as those incurred under the other. Furthermore, the appropriations acts provide, in effect, open-ended appropriations. For example, in

bursement of state EA expenditures is provided under Section 403(a)(5), at a flat rate of 50 percent.[16]

In sum, there are several substantial differences between the AFDC and EA programs, differences that affect beneficiaries, the participating states, and the federal government. In view of these differences, it is plain that a state's payment of AFDC emergency benefits does not constitute the operation of a *de facto* EA program. Thus respondents' challenge to Illinois' EA program became moot when that program was terminated, notwithstanding the State's subsequent decision to pay AFDC emergency benefits.

Pub. L. 94-439, 90 Stat. 1418, 1429, funds from the Fiscal Year 1977 appropriation may be used to fund any deficiencies carried over from Fiscal Year 1976. The Congress to date has always appropriated funds to meet such deficiencies.

[16] States participating in the medicaid program under Title XIX of the Act, however, alternatively may substitute the medicaid reimbursement formula prescribed by Section 1905(b) of the Act, 42 U.S.C. (Supp. V) 1396d(b), to determine the total reimbursement to which they are entitled under Sections 3(a), 403(a), 1003(a), 1403(a), and 1603(a) of the Act, 42 U.S.C. (and Supp. V) 303(a), 603(a), 1203(a), 1353(a), and 1383(a). See Section 1118 of the Act, 42 U.S.C. 1318. Under the medicaid reimbursement formula, "the Federal medical assistance percentage shall in no case be less than 50 per centum or more than 83 per centum." Section 1905(b) of the Act. Thus in those circumstances in which it is advantageous to a state to use the alternative medicaid reimbursement formula, the same reimbursement percentage will apply to its AFDC and EA programs.

II

STATES THAT ELECT TO PROVIDE "EMERGENCY ASSISTANCE TO NEEDY FAMILIES WITH CHILDREN," WITHIN THE MEANING OF SECTION 406(e)(1) OF THE ACT, ARE NOT REQUIRED BY THE ACT TO FURNISH SUCH ASSISTANCE TO ALL SUCH FAMILIES IN ALL CIRCUMSTANCES POSING THE RISK OF DESTITUTION

Shortly after Congress added Sections 403(a)(5) and 406(e) to the Social Security Act, authorizing federal reimbursement of state EA expenditures, the Secretary issued interim regulations that provided that states participating in the EA program were free to specify the conditions of eligibility for EA benefits. 33 Fed. Reg. 10229. These regulations were made permanent on January 10, 1969 (45 C.F.R. 233.120; 34 Fed. Reg. 393), and have remained in force, without any amendment in this respect, since that time. The Secretary's regulations therefore "involve[ ] a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new." *Norwegian Nitrogen Products Co.* v. *United States*, 288 U.S. 294, 315. As such, they are entitled to great weight. See *Power Reactor Co.* v. *Electricians*, 367 U.S. 396, 408.

At least some of the states that have adopted EA programs have relied upon these regulations to restrict eligibility to a class of beneficiaries that excludes some "needy families with children," within the meaning of Section 406(e)(1), or denies coverage in some emergency circumstances posing the risk of destitu-

tion (see Pet. App. 82A).[17] These programs have been approved by the Secretary. Furthermore, during the nine years the regulations have been in effect, and the statute so administered by the Secretary, Congress often has had occasion to consider the statutory scheme and once has amended Section 403(a)(5).[18] Congress has never, however, indicated disapproval of the Secretary's regulations. In these circumstances, the Secretary's long-standing interpretation of the statute, in which Congress appears to have acquiesced, is entitled to judicial deference. *New York State Department of Social Services* v. *Dublino*, 413 U.S. 405, 421; *Udall* v. *Tallman*, *supra*, 380 U.S. at 16.

The Secretary's interpretation is consistent with the language of the statute. Section 403(a)(5) simply authorizes the Secretary to reimburse state payments of "emergency assistance to needy families with children." Section 406(e) describes such assistance in broad terms (see pp. 13-14, *supra*), setting forth the outside limits of a state's discretion to make reimbursable EA payments. Nothing in either provision requires a state to choose between making such payments either to all "needy families with children" (Section 406(e)(1)) or to none, or between making such payments in all emergency circumstances where

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[17] The Secretary has not yet completed his review of state EA programs to determine whether they comply with the decisions of the court of appeal below.

[18] Section 403(a)(5) was amended by Section 301(c) of the State and Local Fiscal Assistance Act of 1972, 86 Stat. 947, in order to change the reimbursement formula.

"necessary to avoid destitution of [the] child" (*ibid.*) or in no emergencies at all.

Nor is there any such requirement in Section 402 (a), the statutory provision that specifies the conditions that must be satisfied before the Secretary may approve a state "plan for aid and services to needy families with children," *i.e.*, the plan that covers both the state's AFDC program and, if one has been adopted, its EA program. Most of the requirements set forth in Section 402(a) apply equally to AFDC and EA programs; some, however, and in particular the requirement in Section 402(a)(10) that benefits be furnished "to all eligible individuals," by their terms apply only to the AFDC program. No requirement applicable to the EA program requires benefits to be paid to all persons to whom such benefits could be paid under Section 406(e)(1).

The court of appeals nevertheless concluded that "Congress intended the eligibility provisions of Section [4]06(a) to be mandatory on the states" (Pet. App. 37A). The court rested its analysis on Section 402(a)(10), which, the court acknowledged (*ibid.*), by its terms pertains only to "aid to families with dependent children" (the AFDC program) and not to "emergency assistance to families with needy children" (the EA program). The court noted that Section 402(a)(10) requires that state AFDC programs cover all families described in Section 406(a) (see *Carleson* v. *Remillard*, 406 U.S. 598; *Townsend* v. *Swank*, 404 U.S. 282; [19] *King* v. *Smith*, 392 U.S. 309)

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[19] In a decision subsequent to the one below, the Second Circuit, apparently without observing that Section 402(a)(10)

and concluded that "[t]he close relationship between Sections [4]02(a) and [4]06(e) leads us to believe that Congress intended that Section [4]06(e) be treated in the same way as Section [4]06(a), which also is closely related to Section [4]02" (Pet. App. 37A).[20]

"This departure from ordinary principles of statutory interpretation is not supported by [this] Court's prior decisions." *Burns* v. *Alcala*, 420 U.S. 575, 580. Although the EA program and the AFDC program both are programs of "aid and services to needy

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applies only to the AFDC program, relied upon *Townsend* v. *Swank*, *supra*, in concluding that once a state adopts an EA program, it is "bound to follow the eligibility conditions established by federal law." *Lynch* v. *Philbrook*, 550 F. 2d 793, 795-796.

[20] The court also thought that other provisions of Section 402(a) that by their terms apply only to AFDC "must apply to Section [4]06(e)" (Pet. App. 37A). The court referred in particular to the "fair hearing" provision of Section 402(a)(4) and the "reasonable promptness" provision of Section 402(a)(10). But the statute need not be stretched beyond its language in the wholesale manner that the court of appeals suggests. A disapointed applicant for EA benefits is entitled to a fair hearing, not, however, because of Section 402(a)(4), but under the Secretary's regulations. See 45 C.F.R. 205.10. Cf. *Goldberg* v. *Kelly*, 397 U.S. 254. Similarly, the Secretary has determined that applications for EA benefits must receive a faster response by state agencies than the "reasonable promptness" with which AFDC benefits must be paid; under the Secretary's regulations, EA benefits must be paid to eligible applicants "forthwith." 45 C.F.R. 233.120(a)(5).

The court mistakenly believed that the reporting requirement of Section 402(a)(6) by its terms also applied only to AFDC (Pet. App. 37A). That requirement applies to all aspects of the state "plan for aid and services to needy families with children;" it is not limited to the AFDC program.

families with children," within the meaning of Section 402(a), that is an insufficient reason for treating them alike when Section 402(a) itself does not do so. They are separate and distinct programs, and where Congress, in setting requirements in Section 402(a), has chosen to distinguish between them, that choice should be respected by the courts. Section 402(a)(10), unlike most provisions of Section 402(a),[21] explicitly is made applicable only to "aid to families with dependent children," and the mandatory eligibility requirement it imposes thereby covers only AFDC programs. Section 402(a) does not impose any mandatory eligibility requirements with respect to EA programs. See *Williams* v. *Wohlgemuth*, 540 F. 2d 163, 168-169 (C.A. 3).[22]

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[21] For example, the requirement in Section 402(a)(1) that the state plan "be in effect in all political subdivisions of the State" applies to all programs covered by the plan, including the EA program where it has been adopted. The court of appeals noted that Section 406(e)(2) partially exempts EA programs from that requirement, and it inferred from that explicit exemption that EA programs are not exempt from any other requirements of Section 402(a) (Pet. App. 37A). But that inference is sound only with respect to requirements that, like that of Section 402(a)(1), by their terms apply to the EA program. Section 406(e)(2) affords no basis for an inference that EA programs are subject to requirements that by their very terms are applicable only to the AFDC program.

[22] The Third Circuit in *Williams* nevertheless inferred from the states' discretion to determine "the amount of time during which the aid will be available, the kinds of aid to provide, and whether to include in the program migrant workers with families" that Congress did not intend to allow them any further discretion, including that of imposing "eligibility stan-

Furthermore, the legislative history is devoid of any suggestion that Congress intended to require participating states to provide the expansive EA relief that the court below has ordered. To the contrary, as we have indicated (p. 19, *supra*), the House and Senate Reports both explicitly endorsed the purpose of giving the states flexibility to deal with the emergency needs of children. It follows that Congress intended the states to retain the freedom to choose their own eligibility standards and coverage limitations, subject only to the proviso that the federal government would not reimburse payments made to persons other than "needy families with children," or payments not "necessary to avoid destitution * * * or to provide living arrangements in a home." Cf. *Batterton* v. *Francis*, No. 75-1181, decided June 20, 1977.

This view of the statute also is consistent with Congress' estimates of the projected cost of funding state EA programs. The House Committee on Ways and

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dards more confining than those contained in the federal statute" (540 F. 2d at 169). But that analysis fails for two reasons. First, it is clear that substantial further discretion is implicitly granted to the states under Section 406(e)(1), including in particular broad discretion to set the level of funding; thus it cannot be persuasively argued that the states retain no more discretion than is explicitly granted. Second, the thrust of Section 406(e) is descriptive; it describes the outer limits of the emergency relief for which the states may be reimbursed. The "discretion" explicitly granted, which really includes only the discretion to provide care and services as well as money payments and to include nonresident migrant workers, was made explicit simply to assure the states that they would be reimbursed for such expenditures if they chose to make them.

Means estimated that the annual cost would be approximately $35 million. 113 Cong. Rec. 23058 (1967).[23] This amount almost certainly would be insufficient for the expansive EA program envisioned by the court of appeals, under which payments would be made to all "needy families with children" wherever "necessary to avoid destitution." [24]

Other evidence in the legislative history also suggests that Congress did not intend a comprehensive and expensive program. A major feature of the Social Security Amendments of 1967 was the so-called "welfare freeze." See Section 208 of Pub. L. 90-248, 81

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[23] In fact, the federal share of the EA program has cost less than Congress anticipated. For example, in Fiscal Year 1972, the year to which the House Committee's estimate applied, federal EA payments amounted to only $22 million. Division of Finance, Department of Health, Education, and Welfare, *Fiscal Year 1972, State Expenditures for Public Assistance Programs Approved Under Titles I, IV-A, X, XIV, and XIX of the Social Security Act*, p. 34 (1972). This amount provided benefits for an average of 19,000 families per month. Department of Health, Education, and Welfare, National Center for Social Statistics, *Report No. A-2* (June 1972) at Table 3. By extrapolation from that figure, it would appear that Congress contemplated coverage of no more than about 30,000 families per month when the program was fully operational in 1972. Thus Congress believed that the EA program would be small as compared with the AFDC program, which provided assistance to more than 10 million persons per month in 1972. *Id.* at Table 1.

[24] The elastic phrase "necessary to avoid destitution" may be given an expansive reading indeed. See, e.g., *Application of Bryant* v. *Lavine*, 79 Misc. 2d 425, 359 N.Y.S. 2d 492 (Sup. Ct.); *Matter of Preston* v. *Barbaro*, 61 Misc. 2d 327, 305 N.Y.S. 2d 627 (Sup. Ct.).

Stat. 894, repealed by Section 3 of Pub. L. 91-41, 83 Stat. 45. This provision, which limited the number of children eligible for AFDC in each state, was the subject of considerable debate and received much attention. See, *e.g.*, Senate Hearings, *supra*, at 142-143, 202, 1001; 113 Cong. Rec. 36785-36786 (statement of Senator Kennedy of New York), 36796 (statement of Senator Javits), 36923 (statement of Senator Nelson) (1967). It is very unlikely that Congress, while economizing through the imposition of a highly controversial "welfare freeze," at the same time, without fanfare, would have moved in the opposite and costly direction of imposing mandatory, expansive, eligibility standards on state EA programs.[25]

III

THE COURT OF APPEALS ABUSED ITS EQUITABLE DISCRETION BY ORDERING NATIONWIDE RELIEF ON BEHALF OF A STATEWIDE CLASS

Even if the court of appeals was correct in its view of the merits of this case, the relief ordered is far broader than was necessary to provide respondents with a complete remedy. Any injuries to respondents could have been fully redressed by statewide relief.

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[25] Finally, the added cost of the comprehensive EA program ordered by the court of appeals would be shared by the participating states. It may well be that many states would choose, as two already have done, to terminate their EA programs altogether rather than expand them in a manner that they may regard as prohibitively costly (see Pet. App. 81A-82A). This ironic result would be entirely at variance with the apparent congressional intention of creating a modest, flexible, state-controlled program of emergency relief.

It is a fundamental tenet of equity jurisprudence that injunctions are to be used sparingly. *Irwin* v. *Dixion*, 9 How. 10, 33. As a corollary, when injunctive relief is granted, it should do no more than afford redress to the complaining parties; the remedy should be no more burdensome on the defendant than is necessary to provide complete relief to the plaintiffs. *Dayton Board of Education* v. *Brinkman*, No. 76-539, decided June 27, 1977; *Whitcomb* v. *Chavis*, 403 U.S. 124, 160-161. "The remedial powers of an equity court must be adequate to the task, but they are not unlimited." *Whitcomb* v. *Chavis*, *supra*, 403 U.S. at 161. See also *Milliken* v. *Bradley*, 418 U.S. 717.

The order of the court of appeals violates this elementary limitation on the exercise of equitable jurisdiction. Respondents are "Illinois recipients of [AFDC benefits] and the Illinois and Chicago Welfare Rights Organizations" (Pet. App. 25A), and they instituted this litigation solely to challenge the validity of the State of Illinois' EA program (App. 20-24). In other words, respondents represent only a statewide class and challenge only a single state's program. Yet, after concluding that that program was defective, the court of appeals ordered nationwide relief by requiring the Secretary to revise his administration of the Social Security Act on a nationwide basis (Pet. App. 20A-23A). Pursuant to that order, the district court has entered judgment requiring the Secretary to promulgate regulations in accordance with the court of appeals' opinions and en-

joining him "from approving state plans for emergency assistance which limit eligibility more narrowly than § 406(e) of the Act or funding an emergency assistance program (however designated) under any provision of the Act other than §§ 406(e) and 403 (a)(5)" (Pet. App. 71A).

Many states and welfare beneficiaries not parties to this suit may be adversely affected by the entry of nationwide relief. Forty-five states currently include "special need" items as part of their AFDC programs (Pet. App. 78A), and twenty-seven states participate in the EA program (*ibid.*). All of these states would be forced to lie in the procrustean bed made by the court of appeals: the Secretary apparently would be required to treat all emergency benefits, even if designated as AFDC "special need" items, as EA programs, and would be required to terminate reimbursement for each EA program that had not been expanded to the maximum extent allowable under Section 406(e)(1). States paying emergency benefits therefore would be forced to terminate emergency benefit programs unless they chose to enlarge them in a manner that many may regard as prohibitively expensive (see note 25, *supra*).[28]

Of course, that may be the result, as a practical matter, if respondents prevail on all aspects of the merits in this Court. But there is a basic difference

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[28] Moreover, if, as we believe would not be the case, the states were barred from terminating AFDC emergency benefits (cf. *Rosado* v. *Wyman*, 397 U.S. 397), they would have no choice but to provide an expansive EA program.

between nationwide enforcement of a decision of this Court and similar enforcement of a decision by a court of appeals, in a case not involving a nationwide class. Once a case reaches this Court, all interested persons are put on notice that a decision dispositive of their claims may be forthcoming. In this case, for example, interested states know that a final decision by this Court will bind them, and they may, as some in fact have done, file briefs *amicus curiae* to ensure that their views are heard. In contrast, other states, except perhaps those located within the Seventh Circuit, had no occasion to participate in this case at its earlier stages, especially in view of the fact that respondents only requested nationwide relief after they prevailed on the merits in the court of appeals.[27] In these circumstances, the order of nationwide relief was fundamentally unfair to the states not parties to the litigation.[28]

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[27] Respondents' complaint stated that only the Illinois EA program was "at issue" (App. 18). Their proposed final judgment filed with the district court on November 26, 1975, following the court of appeals' decision on the necessary scope of a state EA program, however, asked for broad nationwide relief (App. 54-55).

[28] It is true that since the order binds only the Secretary and the State of Illinois, other states would remain free to challenge the Secretary's enforcement of the order. But judicial relief should not unnecessarily force the federal government and the states into opposing positions. Moreover, litigation arising from state challenges to the Secretary's enforcement of the court's order would raise the possibility of subjecting the Secretary to conflicting court orders.

Furthermore, the unnecessary granting of nationwide relief against federal officers, as in this case, is contrary to sound principles of judicial administration, for its places undue burdens upon this Court. Holdings that might not warrant this Court's immediate review if relief had been narrowly tailored inevitably assume substantially greater significance when the relief requires revision in the nationwide administration of a federal program. Thus the unnecessary granting of nationwide relief by a lower court may have the practical effect of forcing this Court to undertake what otherwise might be viewed as premature consideration of complex and important issues. As Mr. Justice Frankfurter once observed (*Maryland* v. *Baltimore Radio Show*, 338 U.S. 912, 918 (respecting the denial of the petition for a writ of certiorari)):

> It may be desirable to have different aspects of of an issue further illumined by the lower courts. Wise adjudication has its own time for ripening.

Finally, the granting of nationwide relief in this case, in the form of an order against the Secretary, constituted an improper interference with the Secretary's regulatory powers, a "forbidden judicial intrusion into the administrative domain." *Arrow Transportation Co.* v. *Southern Ry. Co.*, 372 U.S. 658, 670. Congress has delegated to the Secretary the authority to determine whether and, if so, what regulations are "necessary to * * * efficient administration." Section

1102 of the Act, 42 U.S.C. 1302.[39] It is inappropriate for a court, by affirmatively ordering a particular exercise of the Secretary's authority to prescribe regulations, to make mandatory what Congress has left discretionary. See *United States ex rel. Redfield* v. *Windom*, 137 U.S. 636, 643-644. Cf. *Federal Power Commission* v. *Idaho Power Co.*, 344 U.S. 17, 20-21. It is sufficient for a court to interpret the statutes administered by the Secretary and to order him to follow that interpretation with respect to the parties to the particular litigation; where, as here, the statute itself does not demand regulations, the Secretary should remain free to determine whether regulations are necessary.

Moreover, even where a statute requires the issuance of regulations, supervision of their promulgation is not a judicial function. Cf. *C. & S. Air Lines* v. *Waterman Corp.*, 333 U.S. 103, 112-114; *Federal Radio Commission* v. *General Electric Co.*, 281 U.S. 464, 469. Yet it is precisely that function that the courts below have assumed. The district court, complying with the mandate of the court of appeals, has ordered the Secretary to submit his proposed regula-

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[39] In contrast, Section 1861(v) of the Act, 42 U.S.C. (Supp. V) 1395x(v), requires the Secretary to issue regulations defining the "reasonable cost" of medicare services. See *Kingsbrook Jewish Medical Center* v. *Richardson*, 486 F. 2d 663 (C.A. 2). Since the promulgation of regulations was mandatory under the statute at issue in *Kingsbrook Jewish Medical Center*, but is not required under the statutes relevant here, the court of appeals' reliance upon that decision (see Pet. App. 22A) was misplaced.

tions to the court for its review and approval before they may be issued in final form (Pet. App. 71A-72A). But for a court to purport to approve or disapprove merely proposed regulations "would be to render an advisory opinion in its most obnoxious form." *C. & S. Air Lines* v. *Waterman Corp.*, *supra*, 333 U.S. at 113. The "courts are not charged with general guardianship against all potential mischief in the complicated tasks of government." *Federal Communications Commission* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 146. It is for the administrator, in this case the Secretary, to determine the proper scope and content of any final regulations he promulgates, subject only to subsequent judicial review as the exigencies of litigation may genuinely require. The decision of the court of appeals departs from this appropriate and traditional allocation of executive and judicial powers.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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AUGUST 1977.

APPENDIX

SUPREME COURT OF THE UNITED STATES

No. 76-1416

JOSEPH A. CALIFANO, JR., SECRETARY OF HEALTH, EDUCATION AND WELFARE, PETITIONER

v.

VENUS MANDLEY, ET AL.

ORDER ALLOWING CERTIORARI

Filed June 6, 1977

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted. The case is consolidated with No. 76-1159 and a total of one hour is allotted for oral argument.

SUPREME COURT OF THE UNITED STATES

No. 76-1159

ARTHUR F. QUERN, ETC., ET AL., PETITIONERS

v.

VENUS MANDLEY, ET AL.

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